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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/697,419	10/26/2000	Alan McNutt	99 P 7938 US 01	5374

7590

10/07/2005

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EXAMINER

VU, TUAN A

ART UNIT

PAPER NUMBER

2193

DATE MAILED: 10/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

ku

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/697,419

Applicant(s)

MCNUTT, ALAN

Examiner

Tuan A. Vu

Art Unit

2193

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 4-11.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____

ANIL KHATRI
PRIMARY EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because: Concerning the affidavit, this amounts to an evidence submitted after final action and appears to pursue the grounds of rejections of the Final Action. Since this is after final and that admission of evidences is only for those which can lead to allowance or simplify Appeal issues; and that more importantly there are not sufficient reasons from the Applicants explaining in good faith why this evidence had not been submitted prior to the Final Action, this late evidence appears to be complicating the subsequent effects of a Appeal Brief rather to simplifying the issues thereof. The affidavit is thus not considered (see 37 CFR 1.132 timeliness - In re Rothermel, 37 cfr 1.116b), the arguments in the Remarks by the Applicants will be addressed in the understanding that any arguments relying on this 1.132 ex parte would not be considered. In response to the Moran's reference and argument that Moran is not disclosing a single chip execution device lacking memory external to said chip, the rejection has pointed to the right places, wherein a single chip is disclosed (Fig 3, 9). Based on col. 3 explanation, Moran discloses a integrated chip which can accomplish a controller function and does have a flash storage, both of whose functionalities are represented in Fig. 2 but the physical construct of which is a ASIC with no external memory as mentioned in Moran's Summary. The argument about Official notice being taken by the Examiner to support any rejection does not appear to be founded on any concrete evidence based on scanning the entirety of the Final Action of June 05; hence will not be addressed. Addressing the missing evidence by Moran, the Final office action has established what is suggested from Moran's disclosing of a controller, and based on Stripf, the rationale as to render that PL controller limitation as being obvious has been set forth. As to the point raised asking the Examiner to provide evidence of compilation as claimed when a code is programmable and stored in a flash memory, it is noted that explicitly there is no claim about a compiler compiling a source code; the rejection is based on Moran's storing of code executable and the claim only recites a compilation or 'compiling' (which is a broad term), interpreted as a code being translated from compilation or converted and targeted for use: there is no lack of disclosing of a compilation product from Moran's firmware. A method for conversion into sections of memory in a Flash system as INCORPORATED by reference into Moran's firmware describes a process for compiling code into sectors of flash enabling its management and use, see patent 5404485. The claims as a whole does not provide specifics as to how this 'compiling' is done; hence the flashing of data into a form of firmware as presented by Moran in light of the flash data organizing from the above incorporated reference does read on compiling. Concerning the argument about lack of evidence of PLC, the arguments from the previous office Action will stand. In regard to the combination using Stripf/Moran and Applicant's argument that prima facie is flawed because was not based on evidence of single chip or PLC and that the above combination would be inoperative, there is no support as to why this 'inoperative' statement is founded upon. Besides, the single chip is disclosed by Moran. Since the consideration of the late affidavit is not admitted because of the reasons above, and that the arguments are non persuasive, the claims are still rejected because they are not in condition for allowance. However some minor change in the claim would not complicate Appeal Brief case, the amendments will be entered..